REMARKS

I. INTRODUCTION

Claims 1, 14 and 20 have been amended. Claims 8 and 15 have been cancelled. Thus, claims 1-7, 9-14 and 16-20 are pending in the present application. In view of the above amendments and following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

II. THE 35 U.S.C. § 102(b) REJECTIONS SHOULD BE WITHDRAWN

Claims 1-2, 4-5, 7, 9-11 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,230,047 to McHugh (hereinafter "McHugh"). (See 02/02/2009 Office Action p. 2-4).

Claims 1 and 14 have been amended to recite limitations similar to canceled claim 8. The Examiner has properly not asserted that McHugh teaches the limitations of claim 8. Accordingly, Applicants respectfully submit that McHugh fails to teach the recitation as described in claims 1 and 14. Accordingly, Applicants respectfully submit that claims 1 and 14 are patentable over McHugh. Because claims 2, 4-5, 7, 9-11 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

III. THE 35 U.S.C. § 102(e) REJECTIONS SHOULD BE WITHDRAWN

Claims 1, 3, 6, 8 and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,837,827 to Lee et al (hereinafter "Lee") in view of U.S. Patent No. 5,986,200 to Curtin et al (hereinafter "Curtin"). (See 02/02/2009 Office Action p. 2-7).

Claim 8 has been cancelled.

Lee describes a personal training device adapted to assist a user in reaching performance goals. (See Lee Abstract). The device compares the goal information with the performance information to determine if the performance goals have been met. (See Lee, col. 9, ll. 51-54). If the performance goal has not been met, the device gradually increases the frequency of the audible cues to reflect a change in performance needed to meet the goal. (See Lee, col. 9, ll. 54-60).

Claim 1 recites "[a]n audio pacing device, comprising: a sensing unit to obtain a parameter of a user in physical exercise; a memory to store a plurality of audio signals having predetermined tempo values; and a processing unit configured to (1) determine whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value, and (2) select an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity, *the processing unit being further configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value*."

The Examiner asserts that Lee in view of Curtin describes the recitation of claim 1. Applicants respectfully disagree. Lee describes a device that assists a user to reach a goal by adjusting the frequency of audible cues. (See Lee, col. 9, ll. 51-58). Lee gradually increases the frequency of the audible cues until a performance goal has been reached and then maintains the frequency of the audible cues. (See Lee, col. 9, ll. 58-66). However, Lee increases the frequency of an audible cue without any correlation to an initial audio cue frequency. In contrast, claim 1 recites "the processing unit being further configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value."

Accordingly, Applicants respectfully submit that Lee does not teach the above described limitation of claim 1. Therefore, Applicants submit that claim 1 is allowable. Because claims 3 and 6 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

Independent claim 20 recites "the processing unit being further configured to adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value." Accordingly, Applicants respectfully submit that claim 20 is allowable for at least the same reasons given above with respect to claim 1.

Claims 14, 15, 16, 18 and 19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lee. (See 02/02/2009 Office Action p. 7-8). Applications respectfully disagree.

Claim 15 has been cancelled.

Independent claim 14 recites "[a]n audio pacing method, comprising the steps of: receiving a parameter of a user in physical exercise from a sensing unit; determining whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value; selecting an audio signal having a tempo that enables the user to increase, decrease or maintain the intensity, *further comprising the step of adjusting the tempo of a selected audio signal up to a predetermined percentage of the tempo.*" Accordingly, Applicants respectfully submit that claim 14 is allowable for at least the same reasons given above with respect to claim 1. Because claims 16, 18 and 19 depend from, and therefore include all the limitations of claim 14, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 14.

IV. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 1, 3, 6, 8 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Curtin. (See 02/02/2009 Office Action p. 4-7).

Can 8 has been cancelled.

Applicants submit that Curtin does not cure the above described deficiencies of Lee with respect to claims 1 and 20. Therefore, Applicants submit that claims 1 and 20 are patentable over Lee in view of Curtin. Because claims 3 and 6 depend from, and therefore includes all the limitations of claim 1, it is respectfully submitted that this claim is also allowable for at least the same reasons given above with respect to claim 1.

Claims 12 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McHugh. (See 02/02/2009 Office Action p. 9-10).

Applicants respectfully submit that claims 1 and 14 are patentable over McHugh for the above described reasons. Because claims 12 and 17 depend from, and therefore includes all the limitations of claims 1 and 14 respectively, it is respectfully submitted that this claim is also allowable for at least the same reasons given above with respect to claims 1 and 14.

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Curtin in view of McHugh as taught by U.S. Patent No. 6,135,951 to Richardson et al (hereinafter "Richardson"). (See 02/02/2009 Office Action p. 10-11).

Applicants respectfully submit that Richardson does not cure the above-described limitations of Lee, Curtin, and McHugh with respect to claim 1. Therefore, Applicants submit that claim 1 is patentable over Richardson. Because claim 13 depends from, and therefore includes all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the now pending claims are in condition for allowance. All issues raised by the Examiner having been addressed. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: March 27, 2009 By: 

Michael Marcin (Reg. No. 48,198)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Phone: 212-619-6000
Fax: 212-619-0276